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DEPARTMENT OF JUSTICE

Antitrust Division

***United States v. Zen-Noh Grain Corporation, et al.*; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Zen-Noh Grain Corporation, et al.*, Civil Action No. 1:21-cv-1482-RJL. On June 1, 2021, the United States filed a Complaint alleging that Zen-Noh Grain Corporation's proposed acquisition of 35 operating and 13 idled U.S. grain origination elevators from Bunge North America, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Zen-Noh Grain Corporation to divest nine grain elevators located in five states along the Mississippi River and its tributaries.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the *Federal Register*. Comments should be submitted in English and directed to Robert Lepore, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8000, Washington,

DC 20530 (email address: Robert.Lepore@usdoj.gov).

Suzanne Morris,

Chief, Premerger and Division Statistics,

Antitrust Division.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530

Plaintiff,

v.

ZEN-NOH GRAIN CORP.
1127 Highway 190,
East Service Road
Covington, LA 70433

and

BUNGE NORTH AMERICA, INC.,
1391 Timberland Manor Parkway
Chesterfield, MO 63017

Defendants.

Civil Action No.: 1:21-cv-1482-RJL

Judge Richard J. Leon

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to prevent Zen-Noh Grain Corp. from acquiring assets of Bunge North America, Inc. The United States alleges as follows:

I. INTRODUCTION

1. American farmers produce the crops that feed our nation and the world. The United States' primary crops are corn and soybeans (collectively referred to here as "grain"). American farmers produced 14.2 billion bushels of corn and 4.14 billion bushels of soybeans in 2020, and roughly one-quarter of these grains were exported. In the United States, grain may flow from the farm directly to end users like ethanol plants and feed mills, or farmers can sell their grain to local grain elevators, where it is stored

and aggregated, and later transported by train or barge to more distant domestic end users or to port elevators for export. To earn a fair return on their hard work and investments, farmers rely on vigorous competition between the companies that purchase their grain for direct use or further resale.

2. Zen-Noh Grain Corp. ("ZGC") seeks to acquire 35 operating and 13 idled U.S. grain elevators from Bunge North America, Inc. ("Bunge"). These elevators are located in nine states, mainly along the Mississippi River and its tributaries. ZGC and Bunge are both grain traders and exporters, each purchasing millions of tons of corn and soybeans annually from farmers located across the United States' agricultural regions, and through their networks distributing the grain to customers throughout the United States and the rest of the world.

3. Today, ZGC, along with its affiliate CGB Enterprises, Inc. ("CGB"), a 50-50 joint venture between ZGC and Itochu Corporation, competes against Bunge to purchase corn and soybeans at numerous U.S. grain elevators and at their port elevators. In particular, in some areas along the Mississippi and Ohio Rivers where the Defendants operate competing river elevators, farmers have few – if any – alternative purchasers for their grain. The acquisition will eliminate competition between ZGC and Bunge in those locations; as a result, many U.S. farmers are likely to receive lower prices and poorer quality service when seeking to sell their grain.

4. In nine geographic areas, a Bunge elevator and a nearby ZGC or CGB elevator represent two of only a small number of alternatives where area farmers can sell their grain. In those nine areas, ZGC and Bunge currently compete aggressively to win farmers' business by offering better prices and more attractive amenities such faster grain drop-off services and better grain grading. Faster drop-off services mean farmers can get back to their fields more quickly and make better use of their trucks and employees, ultimately saving time and money. If one elevator is grading grain more harshly or

inconsistently, which may lead to a lower price paid to a farmer for the grain, the farmer has the option of selling to a competing elevator which may grade differently.

5. If the proposed transaction proceeds in its current form, farmers located in these areas are likely to receive lower prices and lower quality services, and have fewer choices for the sale of their crops. The proposed transaction therefore is likely to lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Court should enjoin this unlawful transaction.

II. JURISDICTION AND VENUE

6. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Defendants are engaged in, and their activities substantially affect, interstate commerce. ZGC and Bunge both purchase, store, and sell grain throughout the United States. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. ZGC and Bunge have each consented to personal jurisdiction and venue in this jurisdiction for purposes of this action. Venue is proper under 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c).

III. DEFENDANTS AND THE PROPOSED TRANSACTION

9. This case arises from ZGC's proposed acquisition of certain grain elevator assets from Bunge for approximately $300 million pursuant to an Asset Purchase Agreement entered on April 21, 2020.

10. ZGC, headquartered in Covington, Louisiana, is a subsidiary of the National Federation of Agricultural Cooperative Associations of Japan. ZGC owns and operates a state-of-the-art export elevator located on the Mississippi River near Convent,

Louisiana, from which it trades and exports corn, soybeans, sorghum, wheat, and grain by-products. Recently expanded in 2018 to handle up to 17 million tons of grain annually, ZGC's Convent elevator is the largest port elevator on the Mississippi. ZGC does not own any inland grain elevators and relies upon its affiliate, CGB, to supply the majority of the massive quantities of corn and soybeans ZGC exports annually from Convent. Post-acquisition, ZGC intends to lease the Bunge elevators to CGB to operate through CGB's wholly owned subsidiary, Consolidated Grain and Barge Co.

11. CGB is a 50-50 joint venture between ZGC and Itochu Corporation, a global trading company. CGB operates more than 100 elevators, many of which are located along the Mississippi, Ohio, Arkansas, and Illinois Rivers. CGB is the fifth-largest grain company in the United States by storage capacity. CGB's grain merchandizers are in daily contact with thousands of farmers, actively seeking to purchase grain from them. Currently, CGB sells approximately 60% of the grain it purchases to ZGC.

12. Bunge, headquartered in Chesterfield, Missouri, is the North American subsidiary of Bunge Limited. Bunge is a large agribusiness and food ingredient company that owns and operates grain elevators, oilseed processing plants, and edible oil refineries, as well as grain export terminals. Bunge is the eighth-largest grain company in the United States by storage capacity. Post-acquisition, Bunge will continue purchase grain in the United States via its export elevator on the Mississippi River in Destrehan, Louisiana and its export terminal in Longview, Washington (a joint venture with Itochu Corporation). In addition to the export terminals, Bunge will retain ownership interests in eight elevators in Illinois and Indiana.

IV. THE RELEVANT MARKETS

13. The livelihood of farmers depends on their ability to sell the corn and soybeans they grow to purchasers who offer them the best price, net of transportation and

other selling costs that farmers incur. Ethanol plants and feed and crush mills purchase grain and process it into usable products such as soymeal or fuel. Rail and river elevators also purchase grain and store it until it is sold and transported to end users, in either domestic or export markets.

14. For convenience, some farmers may sell their grain to smaller, "country" elevators, located in closer proximity to the farmer than end users or rail and river elevators. Such elevators serve as grain collection and buying points in rural communities, and may provide other services like grain storage, drying, and conditioning services. Upon aggregating sufficient quantities of grain, or when market prices are most attractive, country elevators ultimately resell the grain to end users or to the larger rail or river elevators that can transport the grain to end users or export elevators.

15. More than 45% of the grain exported from the U.S. is shipped out from port elevator export terminals located at the mouth of the Mississippi River near the Gulf of Mexico. The vast majority of this grain is sourced from river elevators located along the Mississippi and its tributaries. These river elevators, found as far north as Minnesota, purchase grain from surrounding farms, and load it onto barges for transport to the port elevators.

A. Relevant Product Markets

16. ZGC (mainly through CGB) and Bunge own grain elevators, primarily located at rail terminals and along navigable rivers. They compete with other grain purchasers, including ethanol processors, feed mills, and crush processors, to purchase corn and soybeans from U.S. farmers, brokers and country elevators. Corn and soybeans are each distinct products without reasonable substitutes, differing from other agricultural commodities and one another in their physical characteristics, means of production, uses, and pricing. Because of the length of growing seasons, and the suitability of corn and soybeans to certain climates and regions, farmers of these crops would not switch to

production of other agricultural commodities in sufficient numbers to render unprofitable a small but significant decrease in price by a hypothetical monopsonist of that crop. The purchase of corn and the purchase of soybeans for end use or for sale to the export market each constitute a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

B. Relevant Geographic Market

17. Farmers typically haul grain by truck to nearby elevators or end users. Transportation costs increase significantly with every mile the farmers must transport the grain to reach a purchaser, reducing the farmers' profits. Transporting grain also consumes farmers' time. For these reasons, a small change in price would not likely cause farmers to significantly expand the distance they are willing to drive to sell their grain. The distance a farmer is willing to drive is determined in large part by the second-closest potential purchaser, which is the best competitive threat to the purchaser closest to the farmer.

18. Rail or river elevators and other grain purchasing facilities, such as grain crush plants and ethanol plants, typically purchase grain from within the facility's draw area. "Draw area" is an industry term that describes the locations of farms from which the facility expects to acquire most of its grain. Each elevator or end user has a unique draw area due to characteristics such as surrounding road conditions, crop output, local topography, and proximity of competing purchasers. The draw area of a grain purchasing facility is determined by transportation time and costs and so is usually very localized.

19. The draw area of one grain facility frequently will overlap with that of another, resulting in competition between the facilities to purchase grain from farmers. Some farming areas of the country may be located such that they fall within the overlapping draw areas of only a few competing grain purchasing facilities. In particular,

in the following areas where the Defendants' river elevators have overlapping draw areas, there are only a small number of grain purchasers competing to purchase farmers' corn and soybeans:

(a) The overlapping draw areas of elevators in the vicinity of McGregor, Iowa;

(b) The overlapping draw areas of elevators in the vicinity of Albany/Fulton, Illinois;

(c) The overlapping draw areas of elevators in the vicinity of Shawneetown, Illinois;

(d) The overlapping draw areas of elevators in the vicinity of Caruthersville, Missouri;

(e) The overlapping draw areas of elevators in the vicinity of Huffman, Arkansas;

(f) The overlapping draw areas of elevators in the vicinity of Osceola, Arkansas;

(g) The overlapping draws areas of elevators in the vicinity of Helena, Arkansas;

(h) The overlapping draw areas of elevators in the vicinity of Lake Providence, Louisiana; and

(i) The overlapping draw areas of elevators in the vicinity of Lettsworth, Louisiana.

20. These geographic areas satisfy the hypothetical monopsonist test (a "monopsonist" is a buyer that controls the purchases in a given market), the buyer-side counterpart to the hypothetical monopolist test. A hypothetical monopsonist of the purchase of corn or soybeans in each of these areas would impose at least a small but significant and non-transitory decrease in the price paid to farmers. Such a price decrease

for these products would not be defeated by farmers selling to purchasers outside their local area due to the added costs of transportation. As farmers in these areas have already determined the best use of their farmland, a price decrease would also not be defeated by farmers' switching to growing alternative crops. Farmers currently growing corn or soybeans are unlikely convert to production of other agricultural commodities in sufficient numbers to prevent a small but significant decrease in price. Nor could area farmers thwart a post-transaction price decrease by selling instead to local country elevators. Country elevators simply resell grain to river and rail elevators or to other end users; if Defendants lower prices post-transaction, country elevators would be forced to lower their own price to farmers to maintain profitability. Consequently, country elevators cannot mitigate a price decrease resulting from this transaction. Therefore, each of the overlapping draw areas above constitute a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18, for the purposes of analyzing this transaction.

V. ZGC'S ACQUISITION OF CERTAIN GRAIN ELEVATORS FROM BUNGE IS LIKELY TO RESULT IN ANTICOMPETIVE EFFECTS

21. In each of the nine relevant geographic markets, ZGC (and its affiliate CGB) and Bunge are two of a very small number of grain purchasers competing to buy corn and soybeans; in two of these markets, CGB and Bunge are the only elevators available to area farmers. Famers located within these geographic areas depend on this competition to obtain a competitive price for their grain. ZGC's acquisition of Bunge's elevators will substantially lessen competition for the purchase of corn and soybeans in these markets, enabling it to unilaterally depress prices paid to farmers for their crops.

22. Because there are few alternative grain purchasers within these geographic areas, purchases of grain are highly concentrated, with the Defendants accounting for a majority of corn and/or soybean purchases in a given year. For example, in 2019, the Defendants purchased upwards of 95% of the total corn and soybean output of farmers in

Pemiscot County, Missouri; Pemiscot County falls within the draw area of Bunge's Caruthersville, Missouri river elevator, and the draw areas of CGB's Caruthersville and Cottonwood, Missouri river elevators.

23. By eliminating head-to-head competition between ZGC (and its affiliate CGB) and Bunge for grain purchases in these geographic markets, the proposed acquisition would result in lower prices paid to farmers, lower quality of services offered to farmers at the grain origination elevators, and reduced choice of outlets for farmers to sell their grain. The proposed transaction would substantially lessen competition and harm the many farmers selling their crops to river elevators along the Mississippi River and its tributaries.

V. ABSENCE OF COUNTERVAILING FACTORS

24. New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the acquisition's likely anticompetitive effects. New elevators are unlikely to be constructed in these geographic markets because of the high cost of construction and the difficulty of finding appropriate locations to build such a facility along the Mississippi or its tributaries. Even assuming such a location could be found and regulatory and permitting requirements could be fulfilled, constructing a river elevator would take approximately two years to complete.

25. The proposed acquisition is unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects likely to occur.

VII. VIOLATION ALLEGED

26. The United States hereby incorporates the allegations of paragraphs 1 through 26 above as if set forth fully herein.

27. ZGC's proposed acquisition of the Bunge elevators is likely to substantially lessen competition in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

28. Unless enjoined, the proposed acquisition would likely have the following anticompetitive effects, among others:

(a) eliminate present and future competition between ZGC (and affiliate CGB) and Bunge in the each of the relevant geographic markets for the purchase of corn and the purchase of soybeans;

(b) cause prices paid to farmers for corn and soybeans to be lower than they would be otherwise; and

(c) reduce quality, service, and choice for American farmers.

VIII. REQUEST FOR RELIEF

29. The United States requests that the Court:

(a) adjudge ZGC's acquisition of Bunge's elevators to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) permanently enjoin Defendants from consummating ZGC's proposed acquisition of Bunge's elevators or from entering into or carrying out any other agreement, understanding, or plan by which the assets or businesses of ZGC and Bunge would be combined;

(c) award the United States its costs of this action; and

(d) grant the United States such other relief the Court deems just and proper.

Dated: June 1, 2021

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

_____	_____
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*LEAD ATTORNEY TO BE NOTICED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. ZEN-NOH GRAIN CORP., and BUNGE NORTH AMERICA, INC., *Defendants*.	Civil Action No.:1:21-cv-1482-RJL Judge Richard J. Leon

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on _____, 2021;

AND WHEREAS, the United States and Defendants, Zen-Noh Grain Corp. and Bunge North America, Inc., by their respective attorneys, have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to make certain divestitures to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means Viserion or another entity or entities to which Defendants divest the Divestiture Assets.

B. "ZGC" means Zen-Noh Grain Corp., a Louisiana corporation headquartered in Covington, Louisiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates (including CGB), partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Bunge" means Bunge North America, Inc., a New York corporation headquartered in Chesterfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Bunge Elevators" means the elevators located on the properties owned or leased by Bunge listed among the Divested Elevators.

E. "CGB" means CGB Enterprises Inc., a Louisiana corporation headquartered in Covington, LA, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "CGB Elevator" means the elevator located on the property owned or leased by CGB listed among the Divested Elevators.

G. "Viserion" means Viserion Grain, LLC and Viserion International Holdco, LLC, Delaware limited liability companies headquartered in Colorado, their successors and assigns, their subsidiaries, divisions, groups, affiliates, partnerships, and joint

ventures and their directors, officers, managers, agents, and employees.

H. "Divested Elevators" means the following elevators:

Geographic Area	**Elevator(s) to Be Divested**
McGregor, IA	The Bunge Elevator located at 311 E. B St., McGregor, IA 52157
Albany, IL	The Bunge Elevator located at 1002 N. Main St., Albany, IL 61230 **OR** the CGB Elevator located at 561 Broderick Drive, Savanna, IL 61074
Shawneetown, IL	The Bunge Elevator located at 218 Market St., Shawneetown, IL 62984
Caruthersville, MO	The Bunge Elevator located at 100 Ward Ave, Caruthersville, MO 63830
Huffman, AR	The Bunge Elevator located at 7058 E. County Rd. 54, Hwy. 37, Blytheville, AR 72315
Osceola, MO	The Bunge Elevators located at 2220 E. State Hwy. 198 and Mississippi River, Osceola, AR 72370 and at Mississippi County 661 S, Monroe Township, AR 72370
Helena, AR	The Bunge Elevator located at 103 Hanks Ln., Helena, AR 72342
Lake Providence, LA	The Bunge Elevator located at 337 Port Rd., Lake Providence, LA 71254
Lettsworth, LA	The Bunge Elevator located at 17783 Hwy. 418, Lettsworth, LA 70753

I. "Divestiture Assets" means all of Defendants' rights, titles, and interests in and to:

1. the Divested Elevators;

2. all contracts, contractual rights, and relationships, including customer and supplier relationships, and all other agreements, commitments, and understandings, including, supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement that relate exclusively to the Divested Elevators; and

3. all other property and assets, tangible and intangible, wherever located, relating to or used in connection with each Divested Elevator, including:

a. all real property and real property rights, fee simple interests; buildings, facilities, and other structures, including bins, silos, other grain storage facilities, and dock facilities; easements; leasehold and rental rights, including all renewal or option rights; prepaid rent and security deposits; and fixtures, improvements, and assignable improvement warranties;

b. all tangible personal property; equipment, machinery, and tools, such as those used for handling, receiving, unloading, weighing, sampling, grading, elevating, storing, drying, conditioning, loading, and buying and selling grain; vehicles and furniture; supplies, replacement parts, and spare parts; and inventory;

c. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

d. all records and data, including (a) customer and supplier lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers,

suppliers, agents, or licensees, (d) accounting and operating records and ledgers; (e) sales and marketing records, including local marketing plans and sales and advertising materials, (f) records and research data concerning historic and current research and development activities, and (g) drawings, blueprints, and designs; and

e. all other intangible property, including, (a) technical information, (b) design tools and simulation capabilities, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), and quality assurance and control procedures, provided, however, that any intellectual property associated with the brand names Bunge, CGB, Zen-Noh, and ZGC is not included in the Divestiture Assets.

J. "Divestiture Date" means the date[s] on which the Divestiture Assets are divested to Acquirer[s] pursuant to this Final Judgment.

K. "Including" means including, but not limited to.

L. "Relevant Personnel" means: (1) all full-time, part-time, or contract employees employed at the Divested Elevators at any time between August 21, 2020, and the Divestiture Date; (2) all elevator managers, grain merchandisers, and elevator superintendents employed by Bunge or CGB whose job responsibilities are shared between or among Divested Elevators and any non-divested elevators, at any time between August 21, 2020, and the Divestiture Date; and (3) all regional managers employed by Bunge one organizational level above the elevator manager level, wherever located, whose job responsibilities support the grain purchasing business of any of the Bunge Elevators, at any time between August 21, 2020, and the Divestiture Date. The

United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

M. "Transaction" means ZGC's proposed acquisition of 35 operating and 13 idled grain elevators from Bunge.

III. APPLICABILITY

A. This Final Judgment applies to Defendants ZGC and Bunge, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from an Acquirer.

IV. DIVESTITURES

A. Defendant ZGC is ordered and directed within 30 calendar days after entry of the Asset Preservation Stipulation and Order to divest the Divestiture Assets in a manner consistent with this Final Judgment to Viserion or to another Acquirer or Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 90 calendar days in total and will notify the Court of any extensions.

B. Defendant ZGC must use its best efforts to divest the Divestiture Assets as expeditiously as possible, and Defendants may not take any action to impede the permitting, licensing, operation, or divestiture of the Divestiture Assets. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

C. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be

accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of grain purchasing, and that the divestiture to Acquirer or Acquirers will remedy the competitive harm alleged in the Complaint.

D. The divestiture must be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in grain purchasing.

E. The divestiture must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendant ZGC give Defendants the ability unreasonably to raise an Acquirer's costs, to lower an Acquirer's efficiency, or otherwise to interfere in the ability of an Acquirer to compete effectively in grain purchasing.

F. Divestiture of the Divestiture Assets may be made to one or more Acquirers, in one or more transactions, provided that it is demonstrated to the sole satisfaction of the United States that the criteria required by Paragraphs IV(C), IV(D), and IV(E) will still be met.

G. In the event Defendant ZGC is attempting to divest the Divestiture Assets to an Acquirer other than Viserion, Defendant ZGC promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendant ZGC must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-diligence process; *provided, however*, that

Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

H. Defendants must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information regarding the Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Divestiture Assets that customarily would be provided as part of a due-diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

I. Defendants must cooperate with and assist an Acquirer in identifying and, at the option of Acquirer, hiring all Relevant Personnel, including:

1. Within 10 business days following the filing of the Complaint in this matter, or, if the Divestiture Assets are divested to an Acquirer or Acquirers other than Viserion, within 10 business days of notice from the United States pursuant to Paragraph VI.C. that it does not object to a proposed Acquirer, Defendants must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by an Acquirer or the United States, Defendants must provide to Acquirer and the United States additional information related to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. Defendants must also provide to Acquirer and the United States current and accrued compensation and benefits, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed

bonus, any retention agreement or incentives, and any other payments due, compensation or benefited accrued, or promises made to the Relevant Personnel. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of an Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by an Acquirer to employ any Relevant Personnel. Interference includes, but is not limited to, offering to increase the compensation or improve the benefits of Relevant Personnel unless: (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to April 21, 2020, or (b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire 6 months after the Divestiture Date.

5. For Relevant Personnel who elect employment with an Acquirer within 6 months of the Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights (or to the extent such accelerated vesting is not permitted, provide the equivalent benefits), provide any pay pro-rata, provide all other compensation and benefits that their Relevant Personnel have fully or partially accrued, and provide pro-rata all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including any vested retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant

Personnel of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the Divestiture Date, Defendants may not solicit to rehire the following categories of Relevant Personnel hired by an Acquirer from Defendants within 6 months of the Divestiture Date: regional and general managers, elevator managers, grain merchandisers, elevator superintendents, and bookkeepers. Defendants may solicit to rehire these categories of Relevant Personnel if (a) an individual is terminated or laid off by Acquirer, or (b) Acquirer agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph IV.H.6. prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

J. Defendant ZGC must warrant to Acquirer or Acquirers that (1) the Divestiture Assets will be operational and without material defects on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets; and (3) Defendant ZGC has disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

K. For any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between an Acquirer and a contracting party.

L. Defendants must make best efforts to assist Acquirer or Acquirers to obtain all necessary licenses, registrations, certifications, and permits to operate the

Divestiture Assets, including those issued by governmental entities. Until an Acquirer obtains the necessary licenses, registrations, certifications, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, certifications, and permits to the full extent permissible by law.

M. At the option of Acquirer or Acquirers, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendants must enter into contracts to provide transition services for back office, human resources, and information technology, for a period of up to six months after the divestiture occurs on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendments to or modifications of any provision of any contract between either or both Defendants, and Acquirer or Acquirers, to provide transition services are subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services between Defendants and Viserion, for a total of up to an additional six months. In the event the Divestiture Assets are divested to an Acquirer or Acquirers other than Viserion, the United States, in its sole discretion, may approve an extension of any contract for transition services for up to 12 months after the divestiture is completed. If an Acquirer seeks an extension of the term of any contract for transition services, the relevant Defendant must notify the United States in writing at least two months prior to the date the contract expires. An Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon 30 days' written notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of an Acquirer with any other employee of Defendants.

N. If any term of an agreement between Defendants and Acquirer or Acquirers, including an agreement to effectuate the divestiture required by this Final

Judgment, varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendant ZGC has not divested the Divestiture Assets within the period specified in Paragraph IV.A., Defendant ZGC must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer or Acquirer(s) acceptable to the United States, in its sole discretion, at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee will have sole discretion to select the Divested Elevator to be divested in each geographic area listed in Paragraph II.H. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required by Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendant ZGC pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, that are approved by the United States in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendant ZGC any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendant ZGC are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendant ZGC and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendant ZGC and the trust will then be terminated.

H. Defendants must use their best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact with any such person.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) the divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestitures have not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestitures. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of

this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive agreement to divest the Divestiture Assets to an Acquirer or Acquirers other than Viserion, Defendant ZGC or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of the proposed divestiture. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendant ZGC. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of receipt of the notice required by Paragraph IV.A., the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within 15 calendar days of the receipt of the request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A. or within 20 calendar days after the United States has been provided the additional

information requested pursuant to Paragraph VI.B., whichever is later, the United States will provide written notice to Defendant ZGC and any divestiture trustee that states whether or not the United States, in its sole discretion, objects to an Acquirer or Acquirers or any other aspect of the proposed divestitures. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V.C. of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V.C., a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the United States Department of Justice's Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the

United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets.

VIII. ASSET PRESERVATION AND HOLD SEPARATE OBLIGATIONS

Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court.

IX. AFFIDAVITS

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestitures required by this Final Judgment have been completed, each Defendant must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail the fact and manner of Defendants' compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits. Defendant Bunge's obligations under this Paragraph IX.A shall cease 30 calendar days after the closing of the Transaction.

B. Each affidavit required by Paragraph IX.A. must include: (1) the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest

in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of the filing of the Complaint in this matter, each Defendant must also deliver to the United States an affidavit signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant makes any changes to the actions and steps outlined in any earlier affidavits provided pursuant to Paragraph IX.D., Defendants must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to comply with Section VIII until one year after the Divestiture Date.

X. COMPLIANCE INSPECTION

A. For the purpose of determining or securing compliance with this Final Judgment, or related orders such as the Hold Separate Stipulation and Order, or for the purpose of determining whether this Final Judgment should be modified or vacated, upon

written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in the Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to this Section XI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part

16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire 10 years after submission, "unless the submitter requests and provides justification for a longer designation period." See 28 C.F.R. § 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XI. NOTIFICATION

A. Unless a transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Defendant ZGC, may not, without first providing at least 30 calendar days advance notification to the United States, directly or indirectly acquire any assets of or any interest, including a financial, security, loan, equity, or management interest, in grain purchasing facilities, including grain elevators and crush mills, located within a 100-mile radius any Divested Elevator during the term of this Final Judgment; *provided, however*, that the obligations in this Section XI do not apply to Defendant ZGC's acquisition of grain purchasing facilities that were leased by Defendant ZGC as of January 1, 2021.

B. Defendant ZGC must provide the notification required by this Section XI

in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about grain purchasing facilities located within a 100-mile radius of any Divested Elevator.

C. Notification must be provided at least 30 calendar days before acquiring any assets or interest, and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the transaction on behalf of each party, and all management or strategic plans relating to the proposed transaction. If, within the 30 calendar days following notification, representatives of the United States make a written request for additional information, Defendant ZGC may not consummate the proposed transaction until 30 calendar days after submitting all requested information.

D. Early termination of the waiting periods set forth in this Section XI may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section XI must be broadly construed, and any ambiguity or uncertainty regarding whether to file a notice under this Section XI must be resolved in favor of filing notice.

XII. LIMITATIONS ON REACQUISITION

Defendant ZGC may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior authorization by the United States.

XIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or

appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce the Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and continuation of this Final Judgment no longer is necessary or in the public interest.

XVI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. ZEN-NOH GRAIN CORP., and BUNGE NORTH AMERICA, INC., *Defendants.*	Civil Action No.:1:21-cv-1482-RJL Judge Richard J. Leon

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On April 21, 2020, Zen-Noh Grain Corp. ("ZGC") agreed to acquire 35 operating and 13 idled U.S. grain elevators from Bunge North America, Inc. ("Bunge") for approximately $300 million ("the Transaction"). The United States filed a civil antitrust Complaint on June 1, 2021, seeking to enjoin the proposed Transaction. The Complaint alleges that the likely effect of the Transaction would be to substantially lessen competition for purchases of corn and soybeans in nine geographic areas of the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation and Hold Separate Stipulation and Order ("Stipulation"), which are designed to address the anticompetitive effects of the

Transaction. The proposed Final Judgment, explained more fully below, requires the Defendants to divest certain grain elevators and related assets of Bunge or ZGC affiliate CGB Enterprises, Inc. ("the Divestiture Assets") to Viserion Grain LLC and Viserion International Holdco LLC ("Viserion"), or to another acquirer or acquirers acceptable to the United States, within 30 calendar days after entry of the Stipulation.

Under the terms of the Stipulation, the Defendants will take certain steps to ensure that the Divestiture Assets remain independent; that all of the Divestiture Assets remain economically viable, competitive, and saleable; that Defendants will preserve and maintain the Divestiture Assets; and that the level of competition that existed between Defendants prior to the Transaction is maintained during the pendency of the required divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

(A) The Defendants and the Proposed Transaction

Defendant ZGC, headquartered in Covington, Louisiana, is a subsidiary of the National Federation of Agricultural Cooperative Associations of Japan. ZGC owns and operates a state-of-the-art export elevator located on the Mississippi River near Convent, Louisiana, from which it trades and exports corn, soybeans, sorghum, wheat, and grain by-products. Export elevators receive grain, largely via barge or rail, that has been purchased from farmers by inland elevators. Export elevators store the aggregated grain until it can be loaded onto ocean going ships. ZGC does not own any inland grain

elevators and relies upon its affiliate, CGB Enterprises Inc. ("CGB"), to supply the majority of the corn, soybeans and other agricultural commodities ZGC exports annually from Convent. Post-acquisition, ZGC intends to lease the elevators that it proposes to acquire from Bunge to CGB to operate through CGB's wholly owned subsidiary, Consolidated Grain and Barge Co.

CGB is a 50-50 joint venture between ZGC and Itochu Corporation, a global trading company. CGB operates more than 100 elevators in the United States, many of which are located along the Mississippi, Ohio, Arkansas, and Illinois Rivers. CGB is the fifth-largest grain company in the United States by storage capacity. CGB's grain merchandisers are in daily contact with thousands of farmers, actively seeking to purchase grain from them. Currently, CGB sells approximately 60% of the grain it purchases to ZGC.

Defendant Bunge is the North American subsidiary of Bunge Limited. Bunge is a large agribusiness and food ingredient company that owns and operates grain elevators, oilseed processing plants, and edible oil refineries, as well as grain export terminals. Bunge is the eighth-largest grain company in the United States by storage capacity. Post-acquisition, Bunge will continue to purchase grain in the United States via its export elevator on the Mississippi River in Destrehan, Louisiana and its export terminal in Longview, Washington (a joint venture with Itochu Corporation). In addition to the export terminals, Bunge will retain ownership interests in eight grain elevators in Illinois and Indiana.

The 35 operating elevators ZGC proposes to acquire from Bunge are located in nine states – Arkansas, Iowa, Illinois, Indiana, Kentucky, Louisiana, Missouri, Mississippi and Tennessee – primarily along the Mississippi River and its tributaries, and predominantly handle corn and soybeans.

(B) Relevant Markets and the Competitive Effects of the Transaction

American consumers benefit from the productivity and efficiency of American farmers, who annually produce far more volume than needed to meet domestic demand. Corn and soybeans (collectively referred to here as "grain") are the primary crops grown in the United States. American farmers produced 14.2 billion bushels of corn and 4.14 billion bushels of soybeans in 2020, and roughly one-quarter of these grains were exported. In the United States, grain may flow from the farm directly to end users like ethanol plants and feed mills, or farmers may sell their grain to nearby rail or river grain elevators, where it is stored, aggregated, and later transported by train or barge to more distant domestic end users or to port elevators for export.

More than 45% of the grain exported from the United States is shipped out from port elevator export terminals located at the mouth of the Mississippi River near the Gulf of Mexico. The vast majority of this grain is sourced from river elevators located along the Mississippi and its tributaries. These river elevators, found as far north as Minnesota, purchase grain from surrounding farms and load it onto barges for transport to port elevators. Nearly all of the elevators ZGC seeks to acquire from Bunge are river elevators located on the Mississippi or its tributaries.

The livelihood of farmers depends on their ability to sell the corn and soybeans they grow to purchasers who offer them the best price, net of transportation and other selling costs that farmers incur. Ethanol plants and feed and crush mills purchase grain and process it into usable products such as soymeal or fuel. Rail and river elevators also purchase grain and store it until it is sold and transported to end users, in either domestic or export markets.

For convenience, some farmers may sell their grain to smaller, "country" elevators, located in closer proximity to the farmer than end users or rail and river elevators. Such elevators serve as grain collection and buying points in rural communities, and may provide other services like grain storage, drying, and conditioning

services. Upon aggregating sufficient quantities of grain, or when market prices are most attractive, country elevators ultimately resell the grain to end users or to the larger rail or river elevators that can transport the grain to end users or export elevators.

Today, ZGC and its affiliate CGB compete against Bunge to purchase corn and soybeans from farmers. In particular, in nine geographic areas a Bunge river elevator and a nearby ZGC or CGB elevator represent two of only a handful of grain purchasing alternatives for area farmers. In those nine geographic areas, ZGC and Bunge currently compete aggressively to win farmers' business by offering better prices and more attractive amenities such as faster grain drop-off services and better grain grading. Faster drop-off services mean farmers can get back to their fields more quickly and make better use of their trucks and employees, ultimately saving time and money. If one elevator is grading grain more harshly or inconsistently, which may lead to a lower price paid, the farmer has the option of selling to a competing elevator which may grade differently. The Transaction will eliminate competition between ZGC and Bunge in those locations. As result, many U.S. farmers are likely to receive lower prices and poorer quality service when seeking to sell their grain.

1. Relevant Product Markets

ZGC (mainly through CGB) and Bunge own grain elevators, primarily located at rail terminals and along navigable rivers. They compete with other grain purchasers, including ethanol processors, feed mills, and crush processors, to purchase corn and soybeans from U.S. farmers, brokers, and country elevators. Corn and soybeans are each distinct products without reasonable substitutes, differing from other agricultural commodities and one another in their physical characteristics, means of production, uses, and pricing. Because of the length of growing seasons, and the suitability of corn and soybeans to certain climates and regions, farmers of these crops would not switch to production of other agricultural commodities in sufficient numbers to render unprofitable

a small but significant decrease in price by a hypothetical monopsonist of that crop. The purchase of corn and the purchase of soybeans for end use or for sale to the export market each constitute a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Relevant Geographic Markets

Farmers typically haul grain by truck to nearby elevators or end users. Transportation costs increase significantly with every mile the farmers must transport the grain to reach a purchaser, reducing the farmers' profits. Transporting grain also consumes farmers' time. For these reasons, a small change in price would not likely cause farmers to significantly expand the distance they are willing to drive to sell their grain. The distance a farmer is willing to drive is determined in large part by the second-closest potential purchaser, which is the best competitive threat to the purchaser closest to the farmer.

Rail or river elevators and other grain purchasing facilities, such as grain crush plants and ethanol plants, typically purchase grain from within the facility's draw area. "Draw area" is an industry term that describes the locations of farms from which the facility expects to acquire most of its grain. Each elevator or end user has a unique draw area due to characteristics such as surrounding road conditions, crop output, local topography, and proximity of competing purchasers. The draw area of a grain purchasing facility is determined by transportation time and costs and so is usually very localized.

The draw area of one grain facility frequently will overlap with that of another, resulting in competition between the facilities to purchase grain from farmers. Some farming areas of the country may be located such that they fall within the overlapping draw areas of only a few competing grain purchasing facilities. In particular, in the following areas where the Defendants' river elevators have overlapping draw areas, there

are only a small number of grain purchasers competing to purchase farmers' corn and soybeans:

(a) The overlapping draw areas of elevators in the vicinity of McGregor, Iowa;

(b) The overlapping draw areas of elevators in the vicinity of Albany/Fulton, Illinois;

(c) The overlapping draw areas of elevators in the vicinity of Shawneetown, Illinois;

(d) The overlapping draw areas of elevators in the vicinity of Caruthersville, Missouri;

(e) The overlapping draw areas of elevators in the vicinity of Huffman, Arkansas;

(f) The overlapping draw areas of elevators in the vicinity of Osceola, Arkansas;

(g) The overlapping draws areas of elevators in the vicinity of Helena, Arkansas;

(h) The overlapping draw areas of elevators in the vicinity of Lake Providence, Louisiana; and

(i) The overlapping draw areas of elevators in the vicinity of Lettsworth, Louisiana.

These geographic areas satisfy the hypothetical monopsonist test (a "monopsonist" is a buyer that controls the purchases in a given market), the buyer-side counterpart to the hypothetical monopolist test. A hypothetical monopsonist of the purchase of corn or soybeans in each of these areas would impose at least a small but significant and non-transitory decrease in the price paid to farmers. Such a price decrease for these products would not be defeated by farmers selling to purchasers outside their

local area due to the added costs of transportation. As farmers in these areas have already determined the best use of their farmland, a price decrease would also not be defeated by farmers' switching to growing alternative crops. Farmers currently growing corn or soybeans are unlikely convert to production of other agricultural commodities in sufficient numbers to prevent a small but significant decrease in price. Nor could area farmers thwart a post-transaction price decrease by selling instead to local country elevators. Country elevators simply resell grain to river and rail elevators or to other end users; if Defendants lower prices post-transaction, country elevators would be forced to lower their own price to farmers to maintain profitability. Consequently, country elevators cannot mitigate a price decrease resulting from the Transaction. Therefore, each of the overlapping draw areas above constitute a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18, for the purposes of analyzing this transaction.

3. Competitive Effects

In the each of the nine relevant geographic markets, ZGC (and its affiliate CGB) and Bunge are two of a very small number of grain purchasers competing to buy corn and soybeans; in two of these markets, CGB and Bunge are the only elevators available to area farmers. Famers located within these geographic areas depend on this competition to obtain a competitive price for their grain. ZGC's acquisition of Bunge's elevators will substantially lessen competition for the purchase of corn and soybeans in these markets, enabling it to unilaterally depress prices paid to farmers for their crops.

Because there are few alternative grain purchasers within these geographic areas, purchases of grain are highly concentrated, with the Defendants accounting for a majority of corn and/or soybean purchases in a given year. For example, in 2019, the Defendants purchased upwards of 95% of the total corn and soybean output of farmers in Pemiscot County, Missouri; Pemiscot County falls within the draw area of Bunge's Caruthersville,

Missouri river elevator, and the draw areas of CGB's Caruthersville and Cottonwood, Missouri river elevators.

By eliminating head-to-head competition between ZGC (and its affiliate CGB) and Bunge for grain purchases in these geographic markets, the Transaction would result in lower prices paid to farmers, lower quality of services offered to farmers at the grain origination elevators, and reduced choice of outlets for farmers to sell their grain. The Transaction would substantially lessen competition and harm the many farmers selling their crops to river elevators along the Mississippi River and its tributaries.

4. Entry

New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the likely anticompetitive effects of Defendant ZGC's acquisition of Bunge's elevators. Competitors are unlikely to construct new elevators in these geographic markets because of the high cost of construction and the difficulty of finding appropriate locations to build along the Mississippi or its tributaries. Even assuming such a location could be found and regulatory and permitting requirements could be fulfilled, constructing a river elevator would take approximately two years to complete.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor for the purchase of corn and soybeans in certain geographic markets along the Mississippi and Ohio Rivers. The proposed Final Judgment requires the Defendants to divest nine elevators[1] in nine geographic markets within 30 days after the

[1] In Osceola, Arkansas, Bunge has two elevator locations, "Riverside," which as the name implies, abuts the Mississippi, and "Landside," a former soy crush plant located a bit inland from the river. Bunge currently operates the two locations as one combined entity, with Landside being used primarily for overflow storage in support of Riverside; similarly, the proposed Final Judgment and Stipulation view the two Bunge Osceola locations as one asset for purposes of remedying the likely harm from the proposed

entry of the Stipulation by the Court to Viserion or another acquirer or acquirers approved by the United States. In each of those nine geographic markets, a Bunge elevator competes head to head with one or more ZGC or CGB elevators.

The Divestiture Assets include the real property and real property rights, fee simple interests; buildings, facilities, and other structures, including bins, silos, other grain storage facilities, and dock facilities associated with the nine grain elevators. The Divestiture Assets also encompass all existing grain inventories at the elevators, and all contracts (including grain contracts), contractual rights, and relationships, including customer and supplier relationships, and all other agreements, commitments, and understandings, including, supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement that relate exclusively to the elevators that will be divested.

The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that the Divestiture Assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the market for the purchase of corn and the market for the purchase of soybeans. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with any acquirer.

If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to execute the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendant ZGC will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's

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Transaction.

appointment becomes effective, the trustee will provide periodic reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished at the end of six months, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

Under Paragraph IV.I. of the proposed Final Judgment, Defendants must cooperate with and assist the acquirer in identifying and, at the option of acquirer, hiring (1) all full time, part time, or contract employees employed at the divested elevators at any time between August 21, 2020, and the divestiture date; (2) all elevator managers, grain merchandisers, and elevator superintendents employed by Bunge or CGB whose job responsibilities are shared between or among divested elevators and any non-divested elevators, at any time between August 21, 2020, and the divestiture date; and (3) all regional managers employed by Bunge one organizational level above the elevator manager level, wherever located, whose job duties support the grain purchasing business of any of the Bunge elevators, at any time between August 21, 2020, and the divestiture date. Defendants must provide Viserion, or any other acquirer or acquirers, with information on these employees and are prohibited from interfering with the efforts of Viserion, or any other acquirer or acquirers, to hire them.

The proposed Final Judgment includes a non-solicit provision (Paragraph IV.I.6.) prohibiting the Defendants from attempting to rehire relevant personnel that have agreed to work for the acquirer, subject to certain narrow exceptions, such as if an individual is laid off by the acquirer. The non-solicit provision is limited in duration to 12 months, which is a length of time intended to encompass the first harvest season for which the acquirer will be operating the divested elevators. It is also limited in scope to apply only to certain relevant personnel—regional/general managers, elevator managers,

merchandisers, bookkeepers, and site superintendents—the employees most intimately involved with farmer outreach and elevator operation. The categories of employees protected by the non-solicit provision are integral to maintaining customer relations while ownership of the assets is transitioning; elevator managers and the grain merchandisers, in particular, are needed to develop and keep strong customer relationships to get grain into the elevators. Defendants are not restricted, however, from advertising employment openings using general solicitations or advertisements and rehiring relevant personnel who apply for an employment opening through a general solicitation or advertisement.

Under Paragraph IV.M. of the proposed Final Judgment, at the option of the acquirer or acquirers, and subject to approval by the United States in its sole discretion, Defendants must enter into one or more contracts to provide the acquirer or acquirers with transition services for back office, human resources, or information technology, for a period of up to six months after the divestiture occurs, on terms and conditions reasonably related to market conditions for the provision of the transition services. The transition services covered by the proposed Final Judgment are those that might reasonably be necessary to ensure that an acquirer or acquirers can readily and promptly use the assets to compete in the relevant markets.

For the term of the proposed Final Judgment, Paragraph XI.A. requires Defendant ZGC to provide at least 30 calendar days advance notification to the United States of its intent to directly or indirectly acquire any assets of, or any interest in, grain purchasing facilities located within a 100-mile radius any divested elevator. The notification requirement of Paragraph XI.A. applies to transactions that are not subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act").[2] Notification

[2] Paragraph XI.M. exempts from this reporting requirement Defendant ZGC's acquisition of grain purchasing facilities that were leased by Defendant ZGC as of January 1, 2021. The United States has already accounted for ZGC's control over those assets in its

of such non-reportable transactions is necessary because acquisition of a single elevator from another grain purchasing company is not uncommon in the grain industry, and such an acquisition, or even an acquisition of a small suite of elevators, likely would not meet the notification thresholds of the HSR Act, but nevertheless could have a substantial anticompetitive effect.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIV.A. provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIV.B. provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition that would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

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competitive analysis of the Transaction and structuring of the divestiture.

Paragraph XIV.C. of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIV.C. provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIV.D. states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S.

Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Robert Lepore
Chief, Transportation, Energy and Agriculture Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against ZGC's acquisition of grain elevators from Bunge. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the purchase of corn and soybeans in the nine relevant geographic markets along the Mississippi and Ohio Rivers. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final

Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a

court may "not to make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Id.* at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A

district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case"). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act).

This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 1, 2021

Respectfully submitted,

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[FR Doc. 2021-11916 Filed: 6/7/2021 8:45 am; Publication Date: 6/8/2021]